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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 30 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Petition for Rulemaking )  
of Pacific Bell Mobile Services ) RM-8643  
Regarding a Plan for Sharing )  
the Costs of Microwave Relocation )

**REPLY COMMENTS OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply to comments on the Petition for Rulemaking Regarding a Plan for Sharing the Costs of Microwave Relocation filed by Pacific Bell Mobile Services ("PBMS").<sup>1</sup> Cox supports the initiation of a rulemaking to adopt policies that share microwave relocation costs among all benefitting parties.

In its comments, Cox urged that any sharing plan contain objective standards to determine exactly how interference is measured in co-channel and adjacent channel situations in order that there be no confusion over sharing payment obligations. The comments reflect support for Cox's concern.<sup>2</sup>

As demonstrated by the comments of microwave incumbents, the Commission must clarify the microwave relocation obligations of PCS licensees. Contrary to their assertions, the microwave rules provide only that PCS licensees must either not interfere with

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<sup>1</sup>Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995)("PBMS Petition").

<sup>2</sup>In its comments, Southwestern Bell Mobile Systems agrees that the Commission needs to clarify or define the concept of interference. See Southwestern Bell Mobile Systems Comments at 3.

or must relocate individual microwave links that are subject to interference. Each relocated link must have comparable reliability. PCS licensees have no obligation to negotiate to relocate incumbents' entire microwave systems.

I. **THERE IS APPARENT CONFUSION REGARDING THE SCOPE OF RELOCATION OBLIGATIONS THAT IMPACT ANY COMMISSION CONSIDERATION OF COST SHARING**

In its First Report and Order and Third Report and Order in the Emerging Technologies Docket the Commission established a transition framework for relocating incumbent licensees.<sup>3</sup> Under this framework, PCS licensees "are required to avoid interference to incumbent point-to-point microwave operations, and to fully compensate such licensees' relocation costs" to comparable facilities in the event that relocation becomes necessary.<sup>4</sup>

Several incumbent microwave commenters appear to support the PBMS sharing proposal for no other reason than it has apparently been perceived as a means to upgrade entire microwave systems at the expense of PCS licensees. These incumbents' support stems from an apparent belief that cost sharing may result in more "generous" relocation proposals.<sup>5</sup> For example, the Metropolitan Water District of Southern California

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<sup>3</sup>See First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992); Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

<sup>4</sup>Third Memorandum Opinion and Order, GEN Docket No. 90-314, 9 FCC Rcd 6898, 6914 (1994).

<sup>5</sup>In its June 22, 1995 ex parte filing with the Commission, Pacific Telesis described the efforts of one major organization of incumbent microwave users that has suggested that incumbents use the voluntary negotiation period to obtain "upgraded, digital facilities, dedicated wire-line facilities, fiber-optic facilities" or even cash payments in exchange for expedited relocation.

states that the PBMS proposal "may present the framework upon which the Commission can create procedures that expedite the PCS implementation process while enhancing the ability of incumbents to have their entire system changed-out by one PCS provider" (emphasis in original).<sup>6</sup> The City of San Diego is equally ambitious in describing its goals.<sup>7</sup> San Diego argues that the Commission should adopt rules to provide the "necessary incentives" for relocation of entire incumbent microwave systems<sup>8</sup>

It is unfortunate that a proposal plainly intended to provide the public with the benefits of expanded mobile telephone service competition, and to advance the deployment of new technologies, is being used to expand beyond all reasonable proportions PCS licensees' present microwave relocation obligations. The microwave relocation process was intended to encompass the relocation of particular microwave links that were subject to "harmful" interference from emerging technologies providers. The Commission must make clear that emerging technologies providers are not obligated to relocate an incumbent's entire system when interference would only be caused by a single, or very few, individual links.<sup>9</sup>

In crafting the contours of the microwave relocation scheme, the Commission sought to balance the needs of incumbent 2 GHz fixed microwave licensees with those of

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<sup>6</sup>Metropolitan Water District of Southern California Comments at 4.

<sup>7</sup>"PacBell and other PCS licensees talk in terms of replacing links . . . [m]icrowave incumbents, however, must think in terms of replacing their entire systems." City of San Diego Comments at 5.

<sup>8</sup>Id. at 6.

<sup>9</sup>BellSouth Corporation Comments at 4-5.

emerging technologies providers.<sup>10</sup> On one hand, the Commission adopted transition rules to assure that microwave incumbents do not suffer adverse consequences from the Commission's decision to license broadband PCS in the 2 GHz band. At the same time, the Commission recognized the public interest in the rapid deployment of advanced wireless digital communications technologies. In their comments, however, some incumbent microwave licensees seek to redefine the balance struck by introducing the notion that a single broadband PCS licensee should negotiate to relocate entire microwave systems, when only the relocation of an individual link may be required.<sup>11</sup>

The Commission should confirm that the microwave relocation process is not intended to operate as a profit center for incumbent microwave licensees.<sup>12</sup> More importantly, in light of the incumbents' comments, the Commission must reevaluate if necessary whether additional rules or policies should be adopted to ensure that incumbent operators do not use their preference for "full-system" relocation as a block to voluntary

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<sup>10</sup>Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

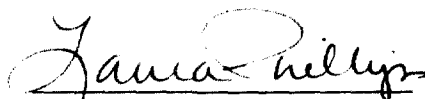
<sup>11</sup>Another example of a potential abuse of the Commission's microwave relocation policies can be found in the South Florida Water Management District's ("District") recent Petition for a Declaratory Ruling which attempts to secure public safety entity status for the District. Public Notice released June 15, 1995. If successful, the District would be subject to the more lenient microwave relocation policies imposed on public safety entities operating in the PCS frequency bands. This result would delay deployment of broadband PCS because the District would be subject to a longer voluntary negotiation period. While Cox takes no position on the merits of the District's particular filing, the filing highlights another potential area where the Commission and interested parties may be bogged down in interminable, needless delay. Because the Commission's rules require, as an absolute baseline, the provision of comparable facilities, Cox submits that a differentiation of the voluntary relocation timetable between public safety and non-public safety incumbents should be eliminated.

<sup>12</sup> One microwave incumbent, the City of San Diego, shamelessly comments that the "free market," not the actual relocation costs incurred, should determine the price paid for microwave relocations. City of San Diego Comments at 7.

link-by-link relocation negotiations.<sup>13</sup> Cox submits that failure of the Commission to clarify its expectations will unnecessarily encumber the microwave relocation process and deprive the PCS licensees and the public of the benefits from rapid deployment of broadband PCS.

Respectfully submitted,

COX ENTERPRISES, INC.

A handwritten signature in cursive script, appearing to read "Laura H. Phillips".

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June 30, 1995

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<sup>13</sup>In bidding for broadband PCS licenses in Spectrum Blocks A and B, bidders calculated their bids based upon the eminently reasonable assumption that microwave relocation expenses would equate to replacement of existing facilities with comparable facilities because that is the standard contained in the Commission's rules. Any change in this assumption would treat PCS licensees unfairly and might jeopardize the economic viability of certain PCS operations.

## CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, hereby certify that today on this 30th day of June, 1995, I caused a copy of the Reply Comments of Cox Enterprises, Inc. to be served by first-class mail, postage prepaid to:

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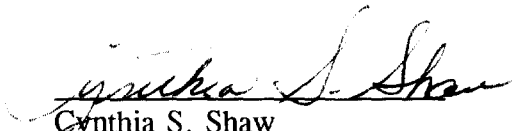
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